

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. S-2507**

**PETITION OF CAROLE M. BOWNS**

(Hearing held April 10, 2002)

**OPINION OF THE BOARD**

(Effective date of Opinion, June 28, 2002)

Case No. S-2507 is a petition pursuant to Section 59-G-2.29 of the Zoning Ordinance (Chapter 59, Montgomery County Code 1994, as amended) for a special exception to permit a major home occupation (art studio) at 17420 Doctor Bird Road, Sandy Spring, Maryland .

**Decision of the Board:** Special Exception **GRANTED**, subject to conditions enumerated below.

A public hearing was held on Wednesday, April 10, 2002, pursuant to Section 59-A-4.11(a) of the Zoning Ordinance. Appearing on behalf of the Petitioner were Susan W. Carter, Esquire and Carole M. Bowns, Petitioner.

Martin Klauber, the People's Counsel of Montgomery County, Maryland, also participated in the proceedings and recommended that the special exception be granted subject to the conditions enumerated below.

There was no opposition to the requested special exception.

**EVIDENCE PRESENTED TO THE BOARD:**

1. The subject property is identified as Parcel 112, Tax Map JT21 and is located at 17420 Doctor Bird Road in Sandy Spring. The rectangular shaped property is approximately 6.0 acres in size and is zoned RE-2. A two-and-one half story single-family dwelling and several accessory buildings, including a barn and carriage house, are located on the site. Additionally, a swimming pool is located west of the dwelling and a pond is located at the southern end of the site. The Technical Staff Report noted that the subject site is identified as an historic site on Montgomery County's Locational Atlas for historic sites (Ex. No. 14).

2. The Technical Staff Report (Ex. No. 14) described the land uses surrounding the subject property as primarily residential with some agricultural and pending institutional uses. There is a horse farm north of the subject property in the RNC (Rural Neighborhood Cluster) zone. To the east, south and west of the subject site are residential properties, along with vacant land, in the RE-2 zone. The property immediately to the west and south is proposed as the new site of Good Counsel High School.

3. The Technical Staff Report (Ex. No. 14) noted that a special exception on the subject site for an antique shop (S-519) was granted by the Board of Appeals in 1976. This use was subsequently abandoned.

4. The Petitioner has requested special exception approval for a major home occupation for the subject site in order to have an art studio in her home. Petitioner's artwork uses mixed media such as paints, foils, etc. She creates whimsical characters which are then painted or applied to objects such as clocks, napkin holders, and mirrors, or to pieces of furniture, such as stools. Because some of the art pieces are large, ample storage area is required (Ex. No. 3).

5. In addition to portions of the single-family dwelling on the property, the Petitioner proposes to use the existing carriage house as studio/storage space for materials and artwork (Ex. Nos. 3 and 6). The proposed special exception will not require construction or any physical modifications to the subject property, and there will be no exterior storage of goods or equipment.

6. The Petitioner presented floor plans for the house and carriage house (Exhibit Nos. 6(a),(b) and (c)) and stated that all work will be conducted inside the dwelling unit and the existing accessory building, and not in any open yard area of the property.

7. Ms. Bowns testified that she has several employees with specific artistic talents who provide her with assistance depending upon the nature of the particular project. She testified that there will be no more than two employees on-site on a given day. Employees will work between the hours of 9:00 AM and 3:00 PM and will park their personal vehicles in the existing driveway as depicted on the site plan.

8. Ms. Bowns testified that no customers will visit the subject property. There may be a UPS delivery or pick-up, but there will be no more than one such delivery/pick-up per day.

9. Ms. Bowns described the proposed signage for the property (Exhibit No. 8) as a painted wooden bed board with lettering reading "Buggy Whip Studio". She explained that the bed board was used to be in keeping with the historic character of the property. She also produced photographs (Exhibit

No. 7) showing that the subject property is well landscaped with mature trees and shrubbery. She added that because the subject property is located in a somewhat rural area and is well screened from surrounding land uses, no additional landscaping is proposed.

10. Ms. Bowns stated that the only lighting associated with the proposed use is a string of miniature white lights strung around the sign. There are several outdoor lights which exist as part of the residential use of the property, but no additional exterior lighting is proposed.

11. She further testified that the operation of the proposed home occupation will be safe, adequate and efficient and will not cause a traffic hazard or a traffic nuisance to occur.

12. Ms. Bowns testified that the proposed use will be in harmony with the surrounding neighborhood and will not adversely affect the health, safety, or welfare of citizens in or around the property, or surrounding properties.

13. The Technical Staff found that the subject property is situated within the Olney Master Plan area. Although the Approved and Adopted 1980 Olney Master Plan is silent regarding any special exception, including the proposed use (Exhibit No. 10), Staff found that the petition is consistent with the overall goals of the Plan.

14. The Technical Staff noted that the proposed special exception will not result in the clearing of existing forest or trees. For that reason, it determined that the subject application is exempt from the Forest Conservation Law (Exhibit No. 9). It stated that there are no other environmental issues associated with this petition.

15. The Technical Staff found that a transportation study is not required for this application since traffic is limited to staff and there are no customers who visit the site. Additionally, delivery and/or pick-up is limited to one vehicle per day. (Exhibit No. 14).

16. The Technical Staff found that the parking standards under Section 59-E of the Zoning Ordinance have no specific requirement regarding parking for a major home occupation. However, Section 59-G-2.29(j)(1) of the Ordinance states that "there must be one parking space for each nonresident employee or associate plus one parking space for every client or customer allowed by the conditions of the special exception to visit in any one-hour period. These spaces must be in addition to the number of spaces required for the residential use of the property." The Technical Staff found that there is sufficient on-site parking within the circular driveway to accommodate approximately five cars (Exhibit No. 14).

17. The Technical Staff found that the subject property is an historic site identified on Montgomery County's Locational Atlas for historic sites as Dr. Bird's house. Staff stated that the Historic Preservation Commission would not review the subject application since no structural modifications are proposed (Exhibit No. 14).

18. The Technical Staff found that the proposed application satisfies the general and specific requirements for the use found in Section 59-G-2.29 of the Zoning Ordinance, and recommended approval subject to conditions (Exhibit No. 14).

### **FINDINGS OF THE BOARD:**

Based on the Petitioner's binding testimony, the evidence of record and the exhibits presented at the public hearing, the Board concludes that the requested special exception can be granted with the conditions set forth below.

### **Section 59-G-1.2 Conditions for granting.**

*59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by the Article. In making these findings, the Board of Appeals...must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.*

The Board finds that the inherent effects of the proposed major home occupation are consistent with the use: small number of employees, limited traffic, and no customers. The Board, based on the Petitioner's evidence and testimony, and the Technical Staff Report, finds that there are no non-inherent adverse effects associated with this petition.

### **Section 59-G-1.21 General Conditions.**

(a) *A special exception may be granted when the Board...finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

The Board finds that the proposed major home occupation is permitted by special exception in the RE-2 Zone, in accordance with Section 59-G-1.21(a)(1) of the Zoning Ordinance.

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

The Board finds that the proposed application satisfies the standards and requirements for a major home occupation, as discussed below, in accordance with Section 59-G-1.21 (a)(2) and Section 59G-2.29 of the Zoning Ordinance.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with a recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting of a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Board finds that the proposed use is consistent with the Approved and Adopted 1980 Olney Master Plan, which is silent with regard to specific special exceptions, in accordance with Section 59-G-1.21(a)(3) of the Zoning Ordinance.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.*

The Board finds that the proposed use, will be in harmony with the general character of the neighborhood, considering population density, design, scale, and bulk of the proposed new structure, intensity and character of activity, traffic and parking conditions, and number of similar uses, in accordance with Section 59-G1.21(a)(4) of the Zoning Ordinance.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general*

*neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that the proposed use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood, in accordance with Section 59-G-1.21 (a)(5) of the Zoning Ordinance.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that the proposed use will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity, in accordance with Section 59-G-1.21(a)(6) of the Zoning Ordinance.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

The Board finds that the major home occupation will not increase the number of approved special exceptions in any neighboring single-family residential area. Furthermore, it will not adversely impact or alter the predominantly residential and agricultural character of the surrounding area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective on any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that the proposed use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area, in accordance with Section 59-G-1.21(a)(8) of the Zoning Ordinance.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

The Board finds that the proposed use will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary

sewer, public roads, storm drainage and other public facilities, in accordance with Section 59-G-1.21 (a)(9) of the Zoning Ordinance.

**Section 59-G-2.29 Home Occupation, Major.**

*The use of a dwelling for a major home occupation, including a professional or home health practitioner's office that is not in accordance with sections 59-A-3.4 and 59-A-6.1 may be allowed, subject to the following provisions:*

- (a) *The use must be clearly subordinate to the use of the dwelling for residential purposes. The amount of floor area used for the major home occupation must not exceed 33 percent of the total floor area of the dwelling unit and existing accessory building on the same lot or parcel. Any enlargement of the total floor area resulting from construction completed on or after the date of application for the special exception or within 18 months immediately preceding the application must be excluded from the total floor area on which this calculation is based.*

The Board finds that the amount of floor area used for the major home occupation is 28% of the total floor area of the dwelling unit and existing accessory building.

- (b) *The use must be conducted within the dwelling unit or any existing accessory building and not in any open yard area of the lot or parcel on which the dwelling is located. Exterior storage of goods or equipment is not permitted. No separate detached building may be constructed on the lot or parcel for the express purpose of specifically operating the home occupation. No more than one existing accessory building may be used for this purpose. The use may, however, involve off-site activities such as sales, client contact and other matters related to the home occupation.*

The Board finds that the major home occupation will be conducted in the existing single-family detached dwelling and carriage house.

- (c) *The Board may grant a special exception for a major home occupation on the same property as a registered home occupation, if it finds that both together can be operated in accordance with the provisions of this section and section 59-G-1.2, title "Conditions for Granting." The Board must not grant a special exception for more than one major home occupation on the same property or approve such a use if the property is also approved for a different special exception in accordance with this division 59-G-2.*

The Board finds that this section is not applicable to this petition.

- (d) *The home occupation office must be conducted only by members of the family, as defined in section 59-A-2.1, residing in the dwelling and a maximum of 2 nonresident employees or associates to be determined by the Board, taking into account the impact on neighboring residences of the resultant parking and traffic. The Board may allow more than 2 nonresident employees for a health practitioner's practice; however, no nonresident health practitioner is allowed. In any case where customers, clients or patients visit the dwelling, there must be no more than 2 resident operators of the home occupation or 2 resident health practitioners or other professional practicing in the dwelling.*

The Board finds that the home occupation will be conducted only by members of the family residing in the dwelling and a maximum of 2 non-resident employees. These employees need not be the same 2 employees each day, provided, however, only 2 employees may visit the site during any given 24 hour period.

- (e) *Clients, customers, patients or other visitors in connection with the home occupation must visit by appointment only. The Board may specify the hours during which they may visit and may limit the number of clients, customers, patients, or other visitors during those periods. An indoor waiting room must be provided. In the case of a home health practitioner, as defined in section 59-A-2.1, emergency patients may visit outside the specified hours or without appointment; abuse of this exemption may lead to revocation of the special exception.*

The Board finds that no customers will visit the subject site.

- (f) *No equipment or process that creates noise, vibration, glare, fumes, odors or electrical or electronic interference detectable at or beyond the lot line is allowed as part of the special exception activity, nor is it allowed to involve use, storage or disposal of:*
- (1) *A quantity of a petroleum product sufficient to require a special license or permit from the fire marshal; or*
  - (2) *Any material defined as hazardous or required to have a special handling license by the Montgomery County Code, as amended, or the Annotated Code of Maryland, as amended, except that disposal of medical waste must be regulated as provided in Maryland State Laws and Regulations.*



The Board finds that the Petitioner currently uses the carriage house to cut wood and to polish artwork. Any noise that emanates from the carriage house is limited and cannot be heard beyond the property lines.

*(g) The only allowable equipment or facilities are those needed for:*

- (1) Domestic or household purposes;*
- (2) General office purposes, such as but not limited to a personal computer, calculator, word processor, or typewriter; or*
- (3) Art or handicraft equipment, such as but not limited to a hand loom, spinning wheel, kiln, or woodworking tools.*
- (4) In the case of a home health practitioner, as defined in section 59-A-2.1, medical equipment may also be used, subject to the provisions of paragraph (f), above.*

The Board finds that the Petitioner uses equipment such as woodworking tools and cutting equipment to produce her artwork.

*(h) The sale of goods on the premises is prohibited, except for:*

- (1) The products of dressmaking, hand-weaving, block-printing, the making of jewelry, pottery or musical instruments by hand, or similar arts or handicrafts performed by a resident of the dwelling; or*
- (2) No more than 5 sales per month of items customarily ordered for delivery to customers at off-site locations.*

The Board finds that orders will be handled by telephone and no sale of goods will occur on the subject property.

*(i) Display or storage of goods is prohibited except for:*

- (1) Such handmade items as are enumerated in paragraph (h)(1) above; or*
- (2) Samples of merchandise that may be ordered by customers to whom it will be delivered at off-site locations, or merchandise awaiting such delivery.*

*The storage of equipment or merchandise for collection by employees who will use or deliver it at off-site locations is prohibited.*

The Board finds that the Petitioner proposes to use the existing carriage house as studio/storage space for materials and artwork.

(j) *Except as provided in paragraph (2), off-street parking must be provided on-site in accordance with the relevant provisions of article 59-E, as follows:*

(1) *For a home health practitioner, the Board may require the number of spaces specified in section 59-E-3.7 for “office, medical practitioner.” Alternatively, and for any other use encompassed by this section 59-G-2.29, there must be one parking space for each nonresident employee or associate plus one parking space for every client or customer allowed by the conditions of the special exception to visit in any one-hour period. These spaces must be in addition to the number of spaces required for the residential use of the property.*

The Board finds that there is sufficient on-site parking to accommodate the employees and major home occupation.

(2) *In determining the necessary amount of on-site parking, the board may take into account the availability of on-street parking spaces, but on-street parking must not be allowed in connection with the home occupation or professional office if it will have an adverse impact on neighboring residences.*

The Board finds that this section is not applicable to this petition.

(3) *Screening must be provided in accordance with section 59-E-2.92. The required spaces must be located in the side or rear yard, except that the Board may approve parking in a driveway traversing the front yard if it finds that there is inadequate space for the parking or necessary screening in the side or rear yard, and the front-yard driveway can be screened in accordance with section 59-E-2.92. If an applicant can establish, to the satisfaction of the Board, that a front-yard parking area was constructed prior to February 5, 1990, in order to satisfy the parking requirements for a residential professional office as a permitted use, the Board may waive the requirement for side or rear yard parking if it finds that such action will not have an adverse impact on neighboring residences.*

The Board finds that there is sufficient space on the asphalt and gravel parking area to accommodate the use. Furthermore, existing trees along Dr. Bird Road and on the western portion of the property provide effective screening of the driveway.

- (k) *In the residential one-family zones regulated by section 59-C-1.3 and in recorded residential subdivisions in the agricultural zones regulated by division 59-C-9, any commercial vehicle that is parked or garaged on-site in connection with the home occupation must comply with the regulations for commercial vehicles in section 59-C-1.31, title "Land Uses." In the townhouse and multiple family zones regulated by sections 59-C-1.7 and 59-C-2.3, respectively, one commercial vehicle may be parked on-site in connection with the home occupation if parked in a garage.*

The Board finds that this section is not applicable to this petition.

- (l) *The Board may restrict deliveries by truck in volume and frequency and may limit them to deliveries by public or private services that also deliver to private homes.*

The Board finds that there will be one delivery/pick-up vehicle per day.

- (m) *A special exception for a major home occupation is granted for a one-year period; application for renewal must be made annually and the special exception may be renewed if it is operated in compliance with the findings and conditions of the Board in the initial grant and satisfies the compliance procedures specified by section 59-G-1.3. The public hearing on the annual renewal may be waived by the Hearing Examiner if the inspection of the premises indicates that the special exception is in compliance with the conditions established by the Board of Appeals and the parties entitled to notice are given an opportunity to request a hearing and fail to do so.*

The Board finds that the special exception is granted with this provision as a condition of its approval.

- (n) *In those zones where a professional office for a resident of a dwelling was permitted by right prior to February 5, 1990, and if a use-and-occupancy permit for the professional office was issued prior to February 5, 1990, the office may be continued as a nonconforming use, as provided in division 59-G-4. (See section 59-C-1.31, 59-C-2.3 or 59-C-9.3)*

The Board finds that this section is not applicable to this petition.

Therefore, based on the foregoing, the Board **GRANTS** the requested special exception for home occupation, subject to the following conditions:

1. The Petitioner is bound by all submitted statements and plans.

2. The total floor area for the major home occupation is limited to portions of the residence and one accessory building. [Exhibits 6(a) – 6(d)]
3. The hours of operation for employees are limited to: 9:00 AM to 3:00 PM Monday through Friday, and the number of employees is limited to two at any one time.
4. Any signs for the subject use must be reviewed and approved by the Sign Review Board.
5. Delivery or pick-up is limited to one vehicle per day.
6. Petitioner shall maintain a log of employees and deliveries to be made available upon inspection of the property by the Department of Permitting Services.
7. This special exception is valid for one year, and shall be renewed annually from the date of its approval. If the Zoning Ordinance is amended to require a two year renewal period, rather than an annual renewal, the renewal period shall be in accordance with the change in the law.

On a motion by Donna L. Barron, seconded by Allison Ishihara Fultz, with Louise L. Mayer, Angelo M. Caputo, and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of

Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 28<sup>th</sup> day of June, 2002.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.